

1 APPEARANCES (continued):

2 MR. BRIAN MCCARTHY
3 130 East Randolph Drive
4 23rd Floor
5 Chicago, Illinois 60601
6 appearing for respondent.

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19 SULLIVAN REPORTING COMPANY, by
20 Patricia Wesley, CSR, RPR
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1 JUDGE RILEY: Pursuant to the direction of the
2 Illinois Commerce Commission, I now call Docket
3 No. 03-0246. This is a complaint by Patricia
4 O'Donnell vs. Peoples Gas, Light and Coke Company as
5 to respondent has threatened to disconnect the gas to
6 my apartment due to a bill incurred by a former tenant
7 from February 2000 to February 2002 in Chicago,
8 Illinois.

9 Counsel for complainant, would you enter
10 your appearance for the record, please.

11 MR. OFFENBACH: Yes. My name is Sigi, S-i-g-i,
12 initial M., last name Offenhach, O-f-f-e-n-b-a-c-h,
13 appearing for Ms. O'Donnell.

14 JUDGE RILEY: And your office address quickly.

15 MR. OFFENBACH: 39 -- the law firm of Pitler and
16 Mandell, P-i-t-l-e-r and Mandell, M-a-n-d-e-l-l, 39
17 South LaSalle Street, Suite 1220, that's Chicago,
18 60603.

19 JUDGE RILEY: Thank you.

20 And for Peoples?

21 MR. McCARTHY: Brian McCarthy for both Peoples
22 Energy Corporation and special appearance for the

1 Peoples Gas, Light and Coke Company, 130 East Randolph
2 Drive, 23rd floor, Chicago, Illinois, 60601.

3 The reason I'm doing a special appearance
4 is that the complaint -- although the Commission
5 changes it, the complaint, if you look at it, says
6 against Peoples Energy Corp., which is actually the
7 parent corporation or the utility serving the City of
8 Chicago.

9 I recognize that it's confusing, but
10 people look at our bill, they say Peoples Energy and
11 underneath a little Peoples Gas.

12 JUDGE RILEY: The actual provider is Peoples, Gas,
13 Light?

14 MR. MCCARTHY: Peoples Gas. If we could amend on
15 the record here, just so it's clear, the proper party
16 is Peoples Gas, Light and Coke Company.

17 MR. OFFENBACH: They still sell Coke?

18 JUDGE RILEY: Is there any objection?

19 MR. OFFENBACH: No, there's not.

20 JUDGE RILEY: Then we'll let the record
21 reflect --

22 MR. OFFENBACH: I just want to know if they still

1 serve Coke.

2 JUDGE RILEY: Let the record reflect that the
3 complaint is amended to reflect that Peoples Gas,
4 Light and Coke Company's replacing Peoples Energy
5 Company as the utility name.

6 MR. McCARTHY: Yes, and also that the notices
7 already have Peoples Gas, Light and Coke Company. The
8 Commission routinely switches it because they
9 recognize that it's us.

10 JUDGE RILEY: To get down to the substance of
11 what's been written here, it seems to me that this
12 appears to be pretty much cut and dry. This prior
13 tenant apparently rang up a bill over the course of
14 a couple of years and complainant got stuck with it
15 when she moved back in.

16 Did this tenant just skip out without
17 paying the bill and left the account in his name?

18 MR. McCARTHY: I think what happened here is that
19 Mr. Serny (phonetic) never applied for service and so
20 the gas -- my understanding is -- I have done a little
21 bit of looking into this, but the gas was used without
22 our authorization. It went through the meter,

1 mind you, but that what the bill in question I guess
2 is for is for what we call an unauthorized service
3 that we went out and got a reading and saw the
4 meter --

5 MR. OFFENBACH: Had been tampered with.

6 MR. McCARTHY: Yes, it could be tampering. I'm not
7 all that clear relating to the facts of this one. I
8 think we can go into this off the record later, but
9 the point being that I do not believe Mr. Serny
10 (phonetic) ever requested service in his name, and so
11 what we are dealing with here is, well, who's
12 responsible in that event, and, as you can see, at
13 least initially, Peoples has come to the conclusion
14 that Patty O'Donnell was responsible for that period.
15 I would like to talk to them off the record.

16 JUDGE RILEY: My other question, from the way the
17 exhibit reads, she had the service turned off in
18 August of '97. When she moved, there was a tenant
19 moved into the premises and had the gas turned on in
20 his name. This Serny individual followed that tenant?

21 MR. McCARTHY: Right. I cannot ascertain whether
22 the guy was there before Mr. Serny or when he applied

1 for service. She's making that statement. I'm not
2 certain of that, but I'm not denying it either.

3 JUDGE RILEY: So we don't know if the -- but she
4 had had the gas turned off in her name, that shouldn't
5 be on that account.

6 MR. McCARTHY: Right. That's true, but when there
7 is tampering -- in other words, for instance, if what
8 we did at the end of that other customer's period of
9 responsibility for the account, we turned off the
10 meter to stop the gas flow.

11 If somebody went out and turned it back
12 on or turned it back on, that's tampering and then the
13 gas flows through the meter. What we do at that
14 point, if you look at the Commission's rules, the
15 Commission's rules says if there's been tampering, the
16 utility can bill anybody who benefits from the
17 tampering so long as it does a reasonable bill.

18 JUDGE RILEY: Has Peoples been able to establish
19 conclusively if there's been tampering with that
20 meter?

21 MR. McCARTHY: I have heard from a brief review of
22 the records, one of the things we are, you know, at

1 this status hearing -- I'd rather not try and make
2 assertions that later be held to, because the
3 investigation has not been completed on this, and I do
4 need -- you know, there are open issues. We were --
5 we were requesting certain information. I don't
6 believe we ever got them, maybe we did and maybe it
7 didn't get to the right people. I don't know.

8 JUDGE RILEY: What is the --

9 MR. OFFENBACH: We had provided the name and
10 address of the -- not address, the social security
11 numbers of tenants at the time. This is Mr. Serny's
12 (indicating). I don't think it's our responsibility
13 to track him down. She never -- first of all, she's
14 got no benefit from this gas whatsoever. She lived in
15 California. She worked for United Airlines.

16 MR. McCARTHY: Does she own the building?

17 MR. OFFENBACH: She worked at United Airlines out
18 of the San Francisco airport. Unfortunately, with
19 United Airlines financial problems, she did lose her
20 job and she had to come back, then she comes back here
21 to Chicago to a building that she's owned, and has
22 collected rents on over the years, and finds she --

1 that she calls up Peoples Gas, she gets service turned
2 on in her name, she pays her bills, as she should, and
3 then all of a sudden she gets a bill. Oh, by the way,
4 you know, a couple years ago somebody didn't pay when
5 you lived there and you owe \$2700.

6 JUDGE RILEY: You said Ms. O'Donnell is the owner
7 of the building --

8 MR. OFFENBACH: Yes.

9 JUDGE RILEY: -- and always has been?

10 MS. O'DONNELL: (Shaking head.)

11 MR. OFFENBACH: Since when?

12 MS. O'DONNELL: For seven years, eight years.

13 JUDGE RILEY: Well, let me ask you this. When you
14 left to go to San Francisco, were you the building
15 owner then?

16 MS. O'DONNELL: Yes.

17 JUDGE RILEY: So you were the billing owner for the
18 relevant time period?

19 MS. O'DONNELL: Right.

20 MR. OFFENBACH: Was it three units?

21 MS. O'DONNELL: Three units, and I don't pay the
22 gas for any units.

1 MR. OFFENBACH: They all have individual meters?

2 MS. O'DONNELL: They all have individual meters.

3 MR. OFFENBACH: And you pay for gas for your meter?

4 MS. O'DONNELL: Right now, and I've been paying the

5 current bill every month since this all started so

6 that my gas bill is up to date as far as I'm

7 concerned.

8 JUDGE RILEY: So you paid the undisputed portion of

9 the bills?

10 MS. O'DONNELL: Right.

11 MR. McCARTHY: You know -- and, obviously, if

12 that's the case, then you are not subject or the

13 pendency of this to disconnect you.

14 MR. OFFENBACH: The reason we had filed this, she

15 got a notice of disconnect.

16 MR. McCARTHY: I mean, until it's disputed

17 properly, yes, you are subject to termination, so one

18 of the issues here is -- well, it seems to me is --

19 what happens in these circumstances when we find out

20 there's been tampering, we look to see who benefited.

21 There is Commission cases that say that a

22 building owner can be a person who benefits from gas

1 service on either to keep their building from
2 deteriorating in the winter and things like that.

3 The open issue is whether she benefitted
4 and I think before we get into that in great detail,
5 it would be good for us to have a talk.

6 JUDGE RILEY: Okay. I want to ask just some more
7 questions on my own. The complainant obviously lives
8 in one unit of the building.

9 MR. OFFENBACH: When did you move back?

10 MS. O'DONNELL: I lost my job in -- I moved back
11 here in like September 1st.

12 JUDGE RILEY: Let me start over again.

13 MR. OFFENBACH: September 1st 2002?

14 MS. O'DONNELL: No, last year. Yes, 2002.

15 JUDGE RILEY: When you -- what unit did you live in
16 in the building when you left?

17 MS. O'DONNELL: The same one.

18 JUDGE RILEY: Which?

19 MS. O'DONNELL: The first floor.

20 JUDGE RILEY: First floor? All right. And you
21 moved back into the first floor when you came back?

22 MS. O'DONNELL: Yes.

1 JUDGE RILEY: And that's the only unit we're
2 talking about then here; is that correct?

3 MS. O'DONNELL: That is correct.

4 JUDGE RILEY: And this is where the other tenants
5 lived, there's an unnamed tenant, and then there was
6 Mr. Serny (phonetic) and they both lived in the first
7 floor unit?

8 MS. O'DONNELL: Yes. The other thing, if I can
9 mention it --

10 JUDGE RILEY: Sure.

11 MS. O'DONNELL: Okay.

12 MR. OFFENBACH: Wait. Wait. Wait.

13 JUDGE RILEY: No, go ahead.

14 MS. O'DONNELL: There was a tenant that moved in
15 after me that had the gas turned onto his name when I
16 had the gas turned off then.

17 JUDGE RILEY: I'm already confused. This is when
18 who moved out?

19 MS. O'DONNELL: When I moved out.

20 MR. OFFENBACH: In '97?

21 JUDGE RILEY: Let me -- okay. You moved
22 out and then a tenant moved in?

1 MS. O'DONNELL: And had the gas put in his name.
2 JUDGE RILEY: Had the gas put in his name?
3 MS. O'DONNELL: Right.
4 JUDGE RILEY: This was the first time after you
5 left?
6 MS. O'DONNELL: Right.
7 JUDGE RILEY: Do you remember that person's name?
8 MS. O'DONNELL: I think his name was Eric Niato
9 (phonetic), something like that.
10 MR. OFFENBACH: I think Niato.
11 MS. O'DONNELL: Something like that.
12 MR. OFFENBACH: I would like --
13 JUDGE RILEY: It's your understanding he did have
14 the account in his name --
15 MS. O'DONNELL: Uh-huh.
16 JUDGE RILEY: -- for the time he was living there?
17 MS. O'DONNELL: Uh-huh.
18 JUDGE RILEY: Then, subsequently, he moved out?
19 MS. O'DONNELL: He moved out.
20 JUDGE RILEY: Do you know if he shut the account
21 off or had it changed?
22 MS. O'DONNELL: From what I understand, when he

1 moved out he had it turned off.

2 MR. OFFENBACH: But you are not sure?

3 MS. O'DONNELL: I'm not sure. I was living 2000

4 miles away.

5 JUDGE RILEY: No, I understand that.

6 MR. OFFENBACH: The next tenant was Mr. Serny?

7 MS. McDONNELL: I believe, so, yes. After Eric

8 Niato was Jim Serny, his father, Ray Serny, but after

9 they moved out -- actually after -- I had to have them

10 evicted for not paying their rent, somebody else moved

11 in and was paying.

12 JUDGE RILEY: So someone moved in after Serny?

13 MS. O'DONNELL: Right. There was -- the gas bill

14 went into this next person's name.

15 JUDGE RILEY: Let me just continue with my

16 questions. You don't know then if Serny ever had the

17 account in his name?

18 MS. O'DONNELL: (Witness shaking head.)

19 MR. OFFENBACH: Yes or no?

20 MS. O'DONNELL: No, I did not know. I'm sorry.

21 JUDGE RILEY: So you had Serny evicted and another

22 tenant moved in?

1 MS. O'DONNELL: Uh-huh.

2 MR. OFFENBACH: Do you know the name of that

3 tenant?

4 MS. O'DONNELL: I don't remember the name, but I

5 know that person that moved out at the end just before

6 I moved back. His name was Mike -- Mike -- Mike. His

7 father's a big wig on the police department.

8 JUDGE RILEY: So, anyway, there was a tenant prior

9 to that Hispanic gentleman that you mentioned,

10 that Eric?

11 MS. O'DONNELL: Right. Right.

12 JUDGE RILEY: Now if that person had had service in

13 his name, these are all on the first floor unit?

14 MS. O'DONNELL: Yes.

15 MR. McCARTHY: So when -- I'm sorry. I'll let

16 you --

17 MR. OFFENBACH: Well --

18 JUDGE RILEY: None of this is in the complaint.

19 That's why I'm trying to get this now. I'm learning

20 this subsequent. There was this whole session of

21 tenants here. We don't know who had service and in

22 whose name. Let me continue to sort this out.

1 MR. OFFENBACH: What was Mike's last name? Do you
2 remember?

3 JUDGE RILEY: Under any circumstances the third
4 tenant --

5 MR. OFFENBACH: The tenant right after Serny --

6 JUDGE RILEY: This is what I'm getting --

7 MS. O'DONNELL: I'm not sure.

8 JUDGE RILEY: Excuse me. Serny was evicted --

9 MS. O'DONNELL: Yes, he was.

10 JUDGE RILEY: -- then you had another tenant move in
11 after Serny?

12 MS. O'DONNELL: Right.

13 JUDGE RILEY: Okay. You don't know if that tenant
14 had service in his or her name?

15 MS. O'DONNELL: I'm not sure, but I think it was
16 Mike -- Mike Striff. That's his name, Mike Striff.

17 MR. OFFENBACH: Could you spell that for the
18 record, please. Striff did you say?

19 MS. O'DONNELL: Striff.

20 MR. OFFENBACH: Spell it, please.

21 MS. O'DONNELL: I'm not sure. I think it's
22 S-t-r-i-f-f.

1 JUDGE RILEY: Okay. And you are not sure if that
2 tenant had service?

3 MS. O'DONNELL I know that he did. His -- he keeps
4 getting final bills sent to the house, which I get
5 because I'm on the first floor.

6 MR. OFFENBACH: So he had gas service, Mike Striff?

7 MS. O'DONNELL: Yes.

8 JUDGE RILEY: And it was in his name? That's what
9 I want to distinguish.

10 MS. O'DONNELL: Yes.

11 JUDGE RILEY: And that's the last tenant before you
12 moved back in?

13 MS. O'DONNELL: Uh-huh.

14 MR. OFFENBACH: Say yes.

15 MS. O'DONNELL: I'm sorry. Yes.

16 MR. OFFENBACH: Say yes or no.

17 JUDGE RILEY: Do you know if he had the service
18 turned off?

19 MS. O'DONNELL: Yes.

20 JUDGE RILEY: But the bills you are getting for
21 this period were when Mr. Serny lived there?

22 MS. O'DONNELL: I could show you why.

1 JUDGE RILEY: Okay. Yeah.

2 MS. O'DONNELL: Can I approach you?

3 JUDGE RILEY: Yes. Sure. Go ahead.

4 MS. O'DONNELL: Okay. This was the original bill

5 that when I first started seeing this unknown

6 occupant --

7 JUDGE RILEY: All right.

8 MS. O'DONNELL: -- it came to my house, right?

9 JUDGE RILEY: All right.

10 MS. O'DONNELL: Then if you'll notice this is on

11 the 7th. On the 23rd, they changed. This is the

12 bill. They changed it to 1624 for this same account

13 number --

14 JUDGE RILEY: Okay.

15 MS. O'DONNELL: -- and they moved all of the money

16 into a bill in my name on this account number.

17 JUDGE RILEY: Okay.

18 MS. O'DONNELL: Then --

19 JUDGE RILEY: Okay.

20 MS. O'DONNELL: And then over here they moved it

21 from this account into my account (indicating). That

22 was my account when I opened up my -- or this is my

1 gas bill. Okay. But they moved it over here into my
2 account (indicating).

3 JUDGE RILEY: Let me -- why did this account number
4 change here? Wait a minute. Now it's in
5 chronological order. Ten, seven -- this was --

6 MS. O'DONNELL: Do I have the wrong address here?

7 JUDGE RILEY: This is all the same address, but
8 what you have got is you have got an October 4th bill
9 in your name under a particular account number and
10 then you have got subsequent bills for the same first
11 floor unit under a different account number. The
12 first one is for what appears to be the disputed sum
13 of money, and then on the 23rd under the same account
14 number that was when they took the -- they cancelled
15 the prior billing.

16 MS. O'DONNELL: They cancelled it because, see,
17 these are the unknown occupant guys and they cancelled
18 it because -- they cancelled it because they threw it
19 on my account.

20 JUDGE RILEY: And then on the 25th, two days later,
21 the 2266, there's the 22 -- anyway, the figures don't
22 match up exactly, but I can see what it was that they

1 did, because if they took it off of unknown occupancy
2 account here and put it onto yours --

3 MS. O'DONNELL: And they tell me they could do it
4 because it's the same type of account.

5 MR. McCARTHY: Same class of service.

6 MS. O'DONNELL: Same class of service.

7 MR. McCARTHY: They're both -- I'm assuming they're
8 both Rate 1s.

9 MR. OFFENBACH: Yes, I would suppose so.

10 MR. McCARTHY: Yes. I can look at the bill.

11 JUDGE RILEY: I could see what they have done.

12 MR. McCARTHY: Rate 1, small residential service.

13 JUDGE RILEY: The only other question that I have,
14 this account number -- so then the only thing that's
15 thrown me are the different account numbers, because
16 what they did when they -- when they finally switched
17 that money over to your account, they switched your
18 account number December and January back to the one
19 that was originally on October 4th.

20 MR. O'DONNELL: I don't -- I don't know.

21 JUDGE RILEY: But I can -- I see what they did
22 there. I just don't know policy or the rhyme or the

1 reason.

2 MR. OFFENBACH: One thing is for sure because there
3 was a tenant before and a tenant after. I don't
4 see why she has any benefit of this. I mean, the
5 building -- I mean, it didn't benefit her at all. She
6 was gone.

7 JUDGE RILEY: I mean, there's questions we have got
8 to answer before that, because this account's
9 apparently in someone else's name. Why is not -- why
10 isn't Mr. Striff being billed or is Ms. O'Donnell
11 being billed because she's the owner of the building
12 and you expect tampering?

13 MR. McCARTHY: Okay. Let me guess as to some of
14 the reasons. It sounds like Mr. Striff is being
15 billed for a period that Mr. Striff applied for
16 service.

17 JUDGE RILEY: Okay.

18 MR. McCARTHY: The question is was there somebody
19 between Niato and Mr. Striff's name, Mr. Serny. If
20 there wasn't, the building owner -- if it's vacant,
21 and the heat is on, and I'm using heat, the building
22 owner is the beneficiary clearly.

1 JUDGE RILEY: That's the Peoples' policy, okay, or
2 is that?

3 MR. McCARTHY: That's Peoples' policy and I think
4 also supported by Commission cases.

5 MS. O'DONNELL: Can I ask a question then.

6 JUDGE RILEY: Yes.

7 MS. O'DONNELL: What I don't understand is then why
8 didn't somebody call me, as the supposed responsible
9 party, because I owned the building, and tell me that
10 the gas was on and there was a bill being run up?

11 MR. McCARTHY: I don't think they knew.

12 MS. O'DONNELL: But how would they not know if they
13 were sending bills out? And I think that's when I had
14 called originally and I said why didn't somebody call
15 me and tell me, the gentleman started to say because
16 it's none of your business and he stopped and I
17 says -- because I said exactly, if it's none of my
18 business, then why are you holding me responsible to
19 pay it.

20 MR. McCARTHY: I guess what I would say is that
21 response, although I wouldn't -- I hope they didn't
22 say it that way but that -- that we -- that goes to a

1 confidentiality issue. We don't talk about other
2 peoples' accounts.

3 MS. O'DONNELL: But if you are going to hold me
4 responsible, then it's my right.

5 MR. McCARTHY: Certainly, and it sounds like he
6 stopped and he was willing to talk to you about it.

7 The next issue is he was working through
8 some issues in his mind. What I suspect happened here
9 is Mr. Mike Striff requested service. We went out to
10 get an initial read on his account, found a whole
11 bunch of gas was used in the intervening two years
12 since the last account in the name of Mr. Niato, that
13 usage unauthorized and so was the bill. They were
14 attempting to find out who was responsible during that
15 period and Mr. Niato may have very well shown evidence
16 that he wasn't there prior to that, so the question
17 becomes who do you hold responsible? The building
18 owner. That takes some investigation. It takes some
19 time.

20 JUDGE RILEY: What you are saying there's a gap --

21 MR. McCARTHY: There's a gap.

22 JUDGE RILEY: -- to usage as to who's responsible

1 for usage, and that's a period where we believe
2 Mr. Serny had moved into that building?

3 MR. McCARTHY: Yes.

4 JUDGE RILEY: Okay.

5 MR. McCARTHY: That's my --

6 JUDGE RILEY: Very possibly that if Mr. Niato
7 cancelled the service in his name, Mr. Striff
8 cancelled service in his name, and Mr. Serny was the
9 guy came and went without anybody knowing about it,
10 then that falls back on to the building owner.

11 MR. McCARTHY: Yes.

12 MS. O'DONNELL: But then as building owner the gas
13 company should be responsible enough to advise me that
14 this person did not contact the gas company so that I
15 can step in --

16 JUDGE RILEY: Right.

17 MS. O'DONNELL: -- and say get this gas turned off.

18 MR. McCARTHY: Let me step back. We don't assume
19 that premises are occupied at all times and take upon
20 ourselves the obligation to inform people who own
21 buildings. This is something we don't know who would
22 own the building. We don't take it upon ourselves to

1 inform people that nobody has gone and requested
2 service at a particular apartment in a building. We
3 don't go to the building owner and do that. We --
4 that doesn't seem to be our obligation.

5 Question is if you have somebody who's
6 done something unauthorized, you know, in other words,
7 turned on the meter when it was off and something like
8 that and gas flowed, it's just this is simply an
9 unjust enrichment-type of issue. We are simply trying
10 to recover the gas usage. The Commission rules say go
11 find who benefited and charge that person.

12 Right now we have no evidence of a
13 Mr. Serny benefiting most directly I guess you'd say.

14 JUDGE RILEY: In other words, his name does not
15 appear as an account holder in Peoples' records?

16 MR. McCARTHY: I don't believe so. That's the gist
17 I got.

18 JUDGE RILEY: Well, this is what we are going to
19 have to determine.

20 MR. McCARTHY: Sure. Sure.

21 JUDGE RILEY: This is going to have been nailed
22 down, was the meter tampered with.

1 MR. McCARTHY: Right.

2 JUDGE RILEY: No. 2, Mr. Serny have an account, did
3 he not have an account with Peoples Gas?

4 MR. McCARTHY: Right. And I guess what I would say
5 about this is that is the kind of thing that I
6 investigate carefully. I'm assuming all those things
7 are the case, but that's the kind of thing I
8 investigate before we go to evidentiary hearing.

9 MS. O'DONNELL: That is a piece of paper from the
10 Social Security Administration and it's written out to
11 Mr. Serny and it shows that he was living in the
12 property at or around that time, because it gives the
13 time (indicating).

14 MR. McCARTHY: Do you have eviction pictures? Do
15 you have a lease?

16 MS. O'DONNELL: No, I served him a 5-day notice and
17 he moved out, so, I mean, I didn't have go to court or
18 anything.

19 JUDGE RILEY: That's my question. Did Mr. Serny
20 ever sign a lease? Did he ever live there pursuant to
21 a lease?

22 MS. O'DONNELL: He lived there without a lease.

1 MR. OFFENBACH: It was a month-to-month tenancy.

2 MS. O'DONNELL: I never had leases with tenants
3 because I'm not real good with paperwork, especially
4 when you live 2000 miles away.

5 MR. OFFENBACH: The part that's sort of interesting
6 here is the logic of what Peoples Gas is doing, but
7 Peoples Gas is saying, hey, listen, somebody took gas,
8 and I found a hot body that owns the property, who
9 wasn't living there, who got the benefit, and I'm
10 going to stop her gas because they didn't get paid
11 when we told you who the owner was.

12 The meters were right next to one another
13 in the basement. They read the meter. They have a
14 meter reader going every single month or when they
15 read the meters if there was gas being used -- do not
16 interrupt me -- when there is gas being used, they
17 didn't know that gas was being used. She's the owner
18 of record of the building. They could have done that.
19 They didn't notify anybody that gas being used, only
20 later they say all of a sudden now you owe not only
21 gas being used but interest and penalty, things that
22 she had absolutely no benefit from, that she has given

1 evidence of who was -- who lived there at the time.

2 We gave social security numbers. We have
3 the father's name and the son's name. They both lived
4 there. There's no requirement under Illinois law,
5 under federal law, to have a written lease.

6 Month-to-month tenancy has been approved in this state
7 since the beginning of this state. There is no
8 problem with that. That is completely legal.

9 She's given you evidence of who's there.
10 If something happened to that meter, Peoples Gas
11 should have notified, and there was a potential that
12 the building owner, who was working in San Francisco,
13 who lived in San Francisco, could have some
14 responsibility for that bill.

15 She should have been notified.

16 The meter reader was right there, right
17 at that meter three years later or four years later
18 and say, hey, you came back because you lost your job,
19 United Airlines, because United Airlines is in
20 terrible financial shape, and say now you owe \$2700 is
21 just completely bogus.

22 JUDGE RILEY: My question is from this point is

1 Peoples willing to establish that there was another
2 tenant during that gap?

3 MR. McCARTHY: Okay. Well, that's what we are --
4 I think that's a big thing we are trying to --

5 JUDGE RILEY: You are uncertain of that?

6 MR. McCARTHY: There's two issues. There's open
7 issues about the period she's provided a name, you
8 know. Like I said, I hesitate to go into too much
9 detail about this because I think it's somewhat
10 premature. I would like to talk to them and find out
11 if they had any evidence of Mr. Serny being there and
12 also any evidence that help show us you weren't there
13 that's out there.

14 MS. O'DONNELL: I already provided all that
15 information.

16 MR. McCARTHY: Did you? If you got more copies, I
17 don't see it in this file, maybe it may have been
18 given to some other people in our customer service
19 department, but the point is -- the point is contrary
20 to what counsel's saying here, this is not a stretch.

21 In fact, the Commission has held that
22 building owners are responsible for tampering when at

1 their premises because they do benefit and it is not a
2 stretch at all. It's quite reasonable especially when
3 we are presenting with no hard evidence that there was
4 a guy there.

5 Final one, one last thing --

6 JUDGE RILEY: Go ahead.

7 MR. McCARTHY: I don't know what the facts are as
8 far as where the meter's located and whether it's
9 close to other meters, but the fact that we may not
10 have discovered somebody, in effect, stealing gas when
11 you turn on a meter that was off, it's our meter,
12 nobody touches them but us, that's stealing and the
13 fact that we don't find stealing right away is not a
14 defense to an action for a bill for stealing.

15 JUDGE RILEY: All right. What I'm getting here
16 essentially --

17 MR. McCARTHY: I'm not alleging that she's stealing
18 by the way.

19 JUDGE RILEY: What I'm trying to find out what
20 would Peoples' policy be if either Peoples or the
21 complainant could establish with documentary evidence
22 that Mr. Serny lived in that unit for the time in

1 question? Now would you still hold the building owner
2 liable?

3 MR. McCARTHY: I'm not sure. I guess I'd have to
4 see it. I would like something to show from Serny
5 what I suspect. If we go to Mr.Serny if we have his
6 address, this is good. This is something.

7 MR. OFFENBACH: This has been provided to counsel.

8 MR. McCARTHY: No, it hasn't.

9 MR. OFFENBACH: To Mr. Brigida.

10 MR. McCARTHY: Well, you know --

11 MR. OFFENBACH: I mean --

12 MR. McCARTHY: I didn't know Peter Brigida ever
13 spoke with you to tell you the truth. This
14 complaint -- I'm handing this. I've never seen this.

15 MS. O'DONNELL: This is my driver's license proving
16 I lived in California during that time.

17 MR. OFFENBACH: We can go off the record on this.

18 MR. McCARTHY: Yes. I think we should go off the
19 record. Let's see if we can gather enough information
20 to cause people to back off.

21 JUDGE RILEY: All right.

22 MR. OFFENBACH: Before we go off the record though,

1 there has been the correspondence with an attorney
2 named Peter Brigida and it seems ridiculous, instead
3 of saying, hey, listen, we need more information or
4 anything, I talked to him three times, gave him
5 actually dozens of pieces of paper to indicate that
6 there's no doubt that Ms. O'Donnell lived in
7 California, worked out of California, had W2s from
8 California, established an account out of California,
9 and that Mr. Serny was in the apartment, and then all
10 of a sudden I get a notice of cancellation from my
11 client saying they're going to stop my gas.

12 It's -- to me, that's the kind of
13 overreaching and improper conduct that is the -- first
14 of all, it's wrong and, second of all, it makes no
15 sense, so I had to file a formal complaint with the
16 Commission.

17 MR. McCARTHY: Mr. Brigida say to you he had
18 settled the matter entirely and Peoples Gas is going
19 to walk away from the bill?

20 MR. OFFENBACH: No.

21 MR. McCARTHY: What expectation that you would
22 have?

1 MR. OFFENBACH: That he would call me first before
2 they cancelled gas, because I dealt with attorney
3 Youngman (phonetic) many years before you have.
4 That's what I would have done. That's what I do when
5 I treat another attorney with respect with the
6 knowledge that he is an attorney practicing law.

7 MR. McCARTHY: Peter Brigida isn't aware of every
8 collection activity. We have 800,000 customers. He
9 doesn't know when everybody gets a bill threatening
10 disconnection. He was attempting to work with you.
11 Obviously, he wasn't convinced.

12 MR. OFFENBACH: He could have called me up.

13 MR. McCARTHY: But he didn't know. He didn't know.
14 He doesn't know what this system kicks out. You don't
15 pay a bill, it kicks out notices that you are going to
16 be terminated. That does not mean you are actually
17 going to be terminated. It's just a systematic thing
18 that it must cover.

19 JUDGE RILEY: Where do we go from here? Where do
20 we go from here?

21 MR. McCARTHY: All I want to do is set a 30-day
22 date. They're not under threat of termination at this

1 point since they have got a formal complaint.

2 JUDGE RILEY: Right.

3 MR. McCARTHY: I'll talk with Peter Brigida. He's
4 completely unaware. He never told me. He sits in the
5 office right next to me. He never talked to me
6 whether he was ever involved in this. I don't
7 think -- maybe he hasn't seen it on our list of
8 complaints.

9 I have got assigned this, so I'll talk to
10 him. I'll see what he's gotten, and this information
11 is certainly helpful to show one thing, which is you
12 weren't there, and including this, that you weren't
13 there at least, you know, during a lot of the period
14 in question, and, but, you know, what I'm trying to
15 point out, one of the strange things about the
16 Commission's rule on this case, we don't have to show
17 that you tampered. We just have to show that somebody
18 tampered and that you benefited. Okay. I know that's
19 strange. It's somewhat of disconnection. That's what
20 the Commission says. That is the law.

21 If we can set this over for like 30 days,
22 I would like to talk to these guys, see what

1 information I can get, and, hopefully, you know, we
2 can end up being comfortable that Mr. Serny was there
3 and bill him, but I can't make that assertion yet,
4 and, in the end, obviously I will have to talk to my
5 client.

6 JUDGE RILEY: You also stated that a hundred
7 percent certain that tampering occurred.

8 MR. McCARTHY: Right. Now none of my assertions
9 are things that are a hundred percent certain, because
10 I need to look at the record myself before I go making
11 assertions.

12 MR. OFFENBACH: One of the things that sort of
13 confuses me is this particular meter has a history
14 that Peoples Gas has on, either it's a written history
15 or they have a computer history, of who the billing
16 people were so we could establish this sort of chain
17 of title, but when she was in California, obviously,
18 she didn't have everything and then we could probably
19 actually specify who was there when this bill was
20 accrued, and I absolutely don't -- do have no
21 knowledge of what part is for gas, and what part for
22 penalties, and what part for late fees.

1 MR. McCARTHY: We can talk about that.

2 MR. OFFENBACH: There's a whole myriad of
3 information that Peoples Gas has. And if the meter
4 was tampered with, there should be a report relative
5 to that meter. Obviously, we do not have that, so we
6 are -- you know, basically in the dark.

7 JUDGE RILEY: Again, they haven't established
8 tampering. It's suspect right now.

9 MR. OFFENBACH: I'm saying if there was to be
10 tampering, I would expect there would be a --

11 JUDGE RILEY: I have seen those before.

12 MR. McCARTHY: Tampering -- let me step back.
13 Tampering is any touching of unauthorized moving of
14 anything related to our service. Sometimes tampering
15 is as subtle as turning a valve that was turned off by
16 the gas company or breaking a lock and turning a
17 valve. Sometimes there's just no evidence or it can
18 be as strong as the meter sitting on the floor as
19 there's a flexible connector between the inlet gas and
20 outlet gas.

21 MR. OFFENBACH: Sometimes there's a lock when what
22 I have seen there's an actual lock.

1 MR. McCARTHY: And they'll break it. People break
2 it.

3 MR. OFFENBACH: I think if that's the case, you
4 know, if there was, and I considered that -- let's
5 say, \$2700, I don't know if that made a felony those
6 cases or not, at least it's a crime. I don't know why
7 someone living in California would be responsible for
8 that crime.

9 JUDGE RILEY: Well, my --

10 MR. OFFENBACH: That's --

11 JUDGE RILEY: I think where we are right now is (1)
12 is to establish whether or not this individual, Serny,
13 was living in that unit at the time for which the
14 billing was sent and whether or not he had an account
15 in Peoples -- in his -- he had a Peoples' account
16 in his name.

17 MR. McCARTHY: Right. Yes. These are all facts
18 that would be -- it would be good to deal with. I
19 think when I look at the complaint, some of the things
20 jump out, or maybe they have to evidence Mr. Serny was
21 there. I didn't realize these discussions had gone on
22 with Mr. Brigida in our office.

1 What I suggest is this 30-day period for
2 the parties to just talk about this. We -- if not, I
3 have got his contact information I could take and talk
4 to Peter. I can get copies of whatever Peter has on
5 this. I can do more investigations on this and then
6 at the end of those 30 days things aren't resolved,
7 we'll go into a discovery mode and you can do what you
8 need to do, you know, and I'll do what I need to do,
9 but what I would like to do is just set like a 30-day
10 period. She's not in any danger of being shutoff.

11 MS. O'DONNELL: I'm going to be moving here.

12 MR. McCARTHY: Are you going back to California or
13 no?

14 MS. O'DONNELL: No, I'm moving to one of my other
15 buildings.

16 MR. McCARTHY: That's fine.

17 MS. O'DONNELL: Am I going to have a problem with
18 gas in my name?

19 MR. McCARTHY: The bill will chase you as long as
20 you are paid up on your current bill. You call me if
21 you have a problem turning on.

22 MS. O'DONNELL: Can I get your business card?

1 JUDGE RILEY: I believe the Commission rules --
2 so long as you have any undisputed portions of the
3 bill, everything is fine. There's no amount due.
4 MS. O'DONNELL: I'm trying not to have him with me
5 next time.
6 (A brief interruption.)
7 JUDGE RILEY: It's all right.
8 MR. McCARTHY: It's all right.
9 JUDGE RILEY: He's better behaved than a lot of
10 attorneys.
11 MR. OFFENBACH: He's got more hair.
12 MS. O'DONNELL: This little guy was born in
13 California, too.
14 MR. McCARTHY: Here.
15 (Business card tendered.)
16 I hesitate -- if you call me directly, if
17 you have got an attorney involved, I'd rather him --
18 JUDGE RILEY: Yes, have counsel do it.
19 MR. McCARTHY: -- otherwise, I have to hang upon
20 you.
21 MS. O'DONNELL: How rude.
22 MR. McCARTHY: I'm an ethical guy. You are an

1 ethical guy. That's what you are suppose to do.

2 MS. O'DONNELL: But I just want --

3 MR. McCARTHY: Maybe we could get copies or is that

4 all right?

5 MR. OFFENBACH: Yes, I gave a copy of those things

6 I believe.

7 MR. McCARTHY: And the driver's license let me just

8 say something on the date. Did you give a copy of the

9 driver's license?

10 MR. OFFENBACH: (Nodding head.)

11 MR. McCARTHY: I'll recognize --

12 MS. O'DONNELL: I have a copy from when I faxed it

13 to you.

14 MR. McCARTHY: Let me do this. Peter Brigida still

15 doesn't have those things, maybe I can talk to you and

16 send them over.

17 MR. OFFENBACH: And I have a copy. You want to

18 just give him that?

19 MS. O'DONNELL: Yes, he can have that.

20 MR. OFFENBACH: You can just keep that one. Shall

21 we go off the record.

22 JUDGE RILEY: Yes, we can go off the record again

1 for right now for tossing paper back and forth.

2 (Off the record.)

3 We can go back on, talk about a date you

4 talked about, suggest 30 days if that enough time.

5 MR. McCARTHY: Yes. I don't see why not.

6 JUDGE RILEY: Because I was going to propose --

7 MR. McCARTHY: If you want to go five weeks.

8 JUDGE RILEY: I was going to propose -- I'm getting

9 kind of crowded the third week in June. I'm going to

10 propose June 26th.

11 MR. McCARTHY: June 26th? Let me just check.

12 (A brief pause.)

13 I'm good on that day.

14 MR. OFFENBACH: Morning or afternoon is your job?

15 MS. O'DONNELL: Shall we do it in the morning?

16 JUDGE RILEY: Generally what we set these things

17 for 10 a.m., if that's all right.

18 MR. OFFENBACH: Is that okay with you?

19 MS. O'DONNELL: Yes.

20 JUDGE RILEY: It's slightly after the rush hour and

21 it's --

22 MR. OFFENBACH: That's fine with me.

1 MS. O'DONNELL: Will I get something in the mail so
2 I can show my boss?

3 JUDGE RILEY: Yes. We'll send out a formal notice.

4 MR. OFFENBACH: Just like we got before?

5 JUDGE RILEY: Yes. And that will be for another
6 status. We are not going to go to hearing yet.

7 MR. OFFENBACH: And then we could -- that would be
8 for status, potential discovery?

9 JUDGE RILEY: Right, if it comes to that, but let's
10 see what we find out in the meantime.

11 MS. O'DONNELL: You have to understand my shock,
12 too, because here I come home after just lost my job
13 that I had for ten years.

14 MR. OFFENBACH: Just like a lot of people at United
15 Airlines and American Airlines.

16 Shall we go off the record?

17 JUDGE RILEY: We are going to talk about the date.

18 MR. OFFENBACH: We have established June 26th at
19 10 o'clock.

20 JUDGE RILEY: June 26th at 10 o'clock.

21 MR. OFFENBACH: Can we go off?

22

1 JUDGE RILEY: That will be for status again. Let's
2 go off the record.

3 (Whereupon, the above
4 matter was adjourned, to
5 be continued to June 26,
6 2003 at 10 o'clock a.m.)

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